

REMARKS

The above-captioned patent application has been carefully reviewed in light of the final Office Action to which this Amendment is responsive. Claim 1 has been further amended in an effort to more clearly and definitively recite that which is regarded as the invention and also to include the subject matter of Claim 14, now canceled. Claims 8-10 and 15-17 have also been amended. Claim 13 has also been canceled. To that end, it is believed that no new matter has been added to the above-captioned application.

Presently, Claims 1, 8-10 and 13-17 stand as pending in the above-captioned patent application. Claims 1, 8 and 13 have been rejected under 35 U.S.C. §102(b) as being anticipated by Lucia, III et al. (U.S. Patent No. 5,951,716), while Claims 1, 8 and 13-17 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Locarno (U.S. Patent No. 5,288,001), in view of Conte '531 and Lucia, III et al.

Applicant gratefully acknowledges the allowability of Claims 9-10 over the prior art of record. Applicant also gratefully acknowledges the telephonic interview granted by Examiner Winnie Yip to Applicant's representative, Peter J. Bilinski, on December 6, 2007. The subject matter of this interview is herein incorporated into the body of this correspondence.

The present container is specifically used to contain an oxygen bottle. The oxygen bottle is generally defined by a substantially cylindrical configuration or housing and includes controls at the top of the housing for the regulation of oxygen that is contained therein. Oxygen bottles, particularly larger oxygen bottles such as C, D and E class bottles for use with individuals that require assistance with breathing, are inherently cumbersome and awkward to handle given their weight and configuration. To that end, a problem that is confronted by patients, users and caregivers alike is the ability to load such awkward articles while simultaneously handling a carrier that is configured to retain the bottle in order to direct and actually load the bottle therein. In the instance of unsupported carriers that are already known in the field, such as that cited by Locarno, an oxygen bottle can only be loaded by an individual by laying the carrier in a horizontal attitude on a floor or a table and then cinching the bottle into the carrier, in a manner analogous to putting on a sock. Even in the instance in which a carrier were supportable on a wheel chair, such as shown in Locarno, the bottle would still have to be initially loaded horizontally into the carrier in the manner described above and then the carrier could be attached

by straps to the wheelchair. Otherwise, attempting to load the bottle into the carrier vertically would require several individuals to retain the bottle and simultaneously align and guide the bottle into the interior of the carrier. Additionally, the carrier must be supported so as to stably position the bottle and permit adjustment, both horizontally and vertically as supported, when needed.

Turning to the prior art rejections, Applicant believes the Section 102 rejection has been rendered moot in that Applicant has now amended Claim 1 to include the subject matter of Claim 14. Withdrawal of this rejection is therefore respectfully requested.

As to the obviousness rejection under Section 103, Applicant respectfully traverses this rejection. First and in order to successfully maintain a "*prima facie*" obviousness rejection under the Statute, each and every claimed limitation must either be found in or suggested by the prior art, whether singly or in combination. Those limitations that are not found or suggested must be notoriously well known in the field of the invention to one of ordinary skill. To that end, there must be a reason found in the prior art as a whole in order to make the purported combination. That is, the combination cannot be the result of impermissible hindsight (i.e., advance knowledge) of the claimed invention. Each and every reference therefore should not be read in a piecemeal fashion so as to simply reconstruct the claimed structure.

Turning to the cited art and as previously noted, Locarno relates to a carrier that retains an oxygen bottle, the carrier being attached to a wheelchair. This carrier includes an open-top pouch 2 that retains the oxygen bottle 8, as well as straps 4 and 6 that enable the carrier to be attached to the wheelchair 30, Fig. 2, with a certain amount of adjustment being possible once the pouch has been attached to the wheelchair. The Locarno carrier is most clearly shown in Fig. 1. Though the upper straps 4 seem to provide some form of reinforcement at the top of the pouch adjacent to its mouth, it is not believed that this carrier is capable of receiving an oxygen bottle without first removing the carrier from the wheelchair and then cinching the cylindrical oxygen bottle into the open top pouch with the pouch being laid substantially horizontally and then reattaching the carrier onto the wheelchair. Such a process is both cumbersome and time consuming in that it is not believed that a user can alone; that is, without assistance, load an oxygen bottle vertically into the carrier. Additionally, it does not appear Locarno is capable of both vertical and horizontal adjustment of the carrier relative to an appliance as presently claimed according to amended Claim 1.

Conte does not seem to include the above features that are missing from Locarno. This secondary reference relates to a carrier that is used in conjunction with a pocket system that is used on strollers, backpacks and child carriers. The pocket system can include a set of stabilizing straps 12 to enable attachment to the larger article (e.g., stroller, backpack, etc.,). This reference clearly does not contemplate receipt of an oxygen bottle. As such, it is not believed this reference would have been consulted with regard to adjustment features concerning straps, simply because the reference is capable of retaining articles in general. Applicant believes that specific recitation of the oxygen bottle in amended Claim 1 now clarifies this issue with regard to possible combination. In any event, this secondary reference also fails to provide an internal rigid plastic peripheral section that maintains an open configuration as presently recited.

With regard to Lucia III (hereinafter "Lucia"), it is believed that the Examiner has broadly interpreted this reference, which relates to a containment bag used specifically for purposes of home dryer dry cleaning. This containment bag is defined by a woven or knit fabric bag having an interior that is prewetted with a cleaning composition. As such, a garment can be stored within the bag and subsequently be cleaned while in the home dryer. The bag 2 is defined by a large open top, shown in Figs. 1 and 2, that can include a form of closure means such as sealing strips (Fig. 1) or others as described in col. 3, lines 50-65, including, for example, a twist-tie 4, as shown in Fig. 2 to close the opening. In addition to the foregoing, the containment bag 2 can also include a set of stiffening rings 7 and 8, see col. 5, lines 8-16, and Fig. 2, which according to the description can be used for retaining the flexible support structure in a fixed position with respect to the containment bag 1. These flexible stiffening rings 7 and 8 are useful as aiding in the support of the shape of the containment bag 1." (col. 5, lines 13-15). As is evident from the drawings, the flexible rings 7 and 8 are defined on the major portion of the containment bag with one ring 7 being disposed fairly close to the top of the bag and the other ring 8 being fairly close to the bottom of the bag, see Fig. 2.

Even in combination, it is not believed that the cited references can produce the invention recited by amended Claim 1 and include all of the essentially claimed features. That is, none of the references, even if combined, teach or describe an internal rigid plastic peripheral section directly adjacent the peripheral mouth portion that maintains a predetermined size and shape in an open configuration and provides stiffness to the mouth portion wherein the mouth portion is

sized to permit ingress of the cylindrical housing of an oxygen bottle. Additionally, it is not believed any of the cited references, either singly or in combination, upper and lower straps to provide both vertical and horizontal adjustment for a container having a supported oxygen bottle, as presently recited according to Claim 1. Even if such features were taught, it is not believed that there is adequate motivation to combine the references without impermissible hindsight. The Examiner believes that the stiffening rings of Lucia can be added to the peripheral mouth of Locarno to produce the present invention. Such a combination is not taught by the references and providing such a combination would be available only through hindsight of the present invention. Additionally, Applicant does not agree that the straps of Locarno form stiffening rings for purposes of providing a reinforced mouth portion capable of providing stiffness in the manner of the present invention to load an oxygen bottom vertically using a single person. Please note that the straps are provided as reinforcement on each of the top and bottom of the pouch. No mention or suggestion is made regarding these straps or their purpose on the pouch and absent the present invention it is believed one would not have consulted Locarno for that feature, even if arguably such a purpose were feasible. As noted, the stiffening rings of Lucia are provided in the interior of the bag and not at the peripheral mouth portion itself. Moreover, Lucia is used specifically in the field of dry cleaning and for retaining garments. This containment bag is not suitable for retaining an oxygen bottle, as specifically claimed according to the combination now recited in Claim 1, the bag being attachable to an orthopedic appliance. Reconsideration is therefore respectfully requested with regard to Claim 1 as amended, and to Claims 8 and 15-17 that are dependent thereon.

In summary and in view of the above amendment, Applicant believes the above-captioned application is now in a condition for allowance and an expedited Notice of Allowability is earnestly solicited.

Application No.: 10/726,172
Amendment Dated December 18, 2007
Final Office Action Dated September 19, 2007

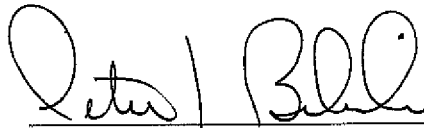
If the Examiner wishes to expedite disposition of the above-captioned patent application, she is invited to contact Applicant's representative at the telephone number listed below.

In the event that any additional fees are required, the Director is hereby authorized to charge Deposit Account No. 50-3010 for any additional fees and to charge any overpayments thereto.

Respectfully submitted,

HISCOCK & BARCLAY, LLP

Date: December 18, 2007

A handwritten signature in black ink, appearing to read "Peter J. Bilinski", written over a horizontal line.

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